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OFFICE OF PETITIONS

In re Application of :
Lundberg et al. :
Application No. 10/786,459 : DECISION ON
Filed: February 25, 2004 : PETITION
Atty Docket No. 6079.102US :

This is a decision on the "Petition to withdraw holding of abandonment" filed November 13, 2007. This petition is treated pursuant to 37 CFR 1.181. This petition also responds to the reference therein to 37 CFR 1.137(a) and to the accompanying "Contingent Petition to Revive as unintentional."

The petition to withdraw holding of abandonment is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee and publication fee within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed May 16, 2007. The period for transmitting the issue fee (and publication fee) is not extendable. No reply having been received, the above-identified application became abandoned on August 17, 2007. A courtesy Notice of Abandonment was mailed on September 13, 2007.

In response, applicants timely filed the instant petition. Applicants request withdrawal of the holding of abandonment on the basis that the Notice of Allowance with a mailing date of May 16, 2007 was not received at the correspondence address of record.

A review of the application file does not reveal an irregularity in the mailing of the Notice of Allowance mailed May 16, 2007. Thus, there is a strong presumption that the correspondence was

properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. As stated in MPEP 711.03(c):

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three-month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has supported his claim of non-receipt with such evidence.

In view thereof, the notice of abandonment mailed September 13, 2007 and the holding of abandonment are hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Since consideration of the petition under 37 CFR 1.137(a) or (b) is unnecessary, the fees charged for such consideration are being refunded to the credit card charged and Deposit Account No. 50-1905, as appropriate.

The petition includes payment of the Issue Fee, the PTOL-85(b) and payment of the Publication Fee¹. Accordingly, the Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Publication Division's technical support staff to withdraw the holding of abandonment and for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

¹ There was no distinct and concurrent requirement for corrected drawings.